

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VINCENT A. CHINGMAN,

Defendant.

Criminal No. 01-20010

Civil No. 05-20010

Honorable David M. Lawson

Magistrate Judge Charles E. Binder

**ORDER ADOPTING IN PART REPORT AND RECOMMENDATION, GRANTING
MOTION TO VACATE, AND VACATING PREVIOUS CONVICTION AND
SENTENCE**

The defendant, Vincent A. Chingman, was originally convicted in this Court on September 25, 2001 pursuant to his guilty plea to possessing with the intent to distribute 500 or more grams of cocaine. He was sentenced to 262 months imprisonment on January 25, 2002. On May 4, 2005, the defendant filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Among other things, he argued that he had suffered from the ineffective assistance of counsel in that trial counsel failed to inform him of the significance of an intent to use a portion of the drugs for personal consumption. On September 1, 2006, Magistrate Judge Charles E. Binder issued a report recommending that the defendant's motion be granted in part, that an evidentiary hearing be held to determine the personal-use quantity of the total cocaine seized, and that the defendant be resentenced accordingly. Although the parties' filed objections to the report, they later came to an agreement to resolve the defendant's motion under section 2255. The government agreed that the motion should be granted and the defendant's conviction vacated. The parties then negotiated a new Rule 11 plea agreement. With that understanding, the parties appeared before the Court on November 14, 2007. The Court

heard oral argument on the motion and announced its decision from the bench.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt # 78] is **ADOPTED IN PART** for the reasons stated on the record.

It is further **ORDERED** that the defendant's motion to vacate brought under 28 U.S.C. § 2255 [dkt # 55] is **GRANTED** for the reasons stated on the record.

It is further **ORDERED** that the judgment entered by this Court on January 25, 2002 [dkt # 25] is **VACATED** for the reasons stated on the record.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: November 15, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 15, 2007.

s/Felicia M. Moses

FELICIA M. MOSES